No. 15406

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MAX SHAYNE and IRVING SHAYNE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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Statement of the Case.

An indictment in nine counts was filed on January 4, 1956 [Clk. Tr. p. 213], essentially charging the appellants as follows:

Count I, from June 1952 to April 1953 appellants Max Shayne and Irving Shayne conspired together and with other persons (a) to defraud the United States by causing the Federal Housing Administration to insure and guarantee loans for home improvements by reasons of false and fraudulent written statements which would be made pursuant to said conspiracy and which loans would not otherwise be so insured and guaranteed; (b) to commit certain offenses against the United States in violation of Sections 1010 and 2 of Title 18, United States Code, by causing to be passed, uttered and published certain false statements to lending institutions, for the purpose of obtaining for certain applicants loans and advances of credit from said lending institutions, with the intent that such loans and advances of credit would be offered to and accepted by, the Federal Housing Administration for insurance (a verbatim copy of this count is set forth in the Appendix hereto);

Count II, on April 24, 1953 both appellants Max and Irving Shayne caused to be passed, uttered and published certain false statements pertaining to applicant-borrowers Archie L. Thompson and Viola Thompson in violation of Sections 1010 and 2 of Title 18, United States Code.

Count III, same type of offense as Count II except it occurred on June 10, 1952 in respect to applicant-borrowers Henry E. Green and Martha Green.

Count IV, similar to Count II, except it occurred October 15, 1952 pertaining to applicant-borrowers Mandell Drakes and Moshell Drakes.

Count V, similar to Count II, except Max Shayne alone is charged and it occurred October 3, 1952 pertaining to applicant-borrowers Eligh S. Moore and Vivian Moore.

Count VI, similar to Count II except Max Shayne alone is charged and it occurred September 5, 1952 pertaining to applicant-borrower David L. Hamilton.

Count VII, similar to Count II, except Max Shayne alone is charged and it occurred July 15, 1952 pertaining to John Olsen and Leona Olsen.

Count VIII, similar to Count II, except Max Shayne alone is charged and it occurred June 16, 1952 pertaining to applicant-borrower H. C. Cooper. This count was dismissed by the government [Rep. Tr. 1508].

Count IX, similar to Count II, except Max Shayne alone is charged and it occurred on June 17, 1952 pertaining to applicant-borrowers Earnest C. Johnson and Flordie Mae Johnson.

Prior to plea the defendants filed certain preliminary motions as follows:

A Motion to Dismiss Indictment, filed February 15, 1956 [Clk. Tr. p. 14];

A Motion for Bill of Particulars, filed February 15, 1956 [Clk. Tr. p. 16];

A Motion for Discovery and Inspection, filed February 15, 1956 [Clk. Tr. p. 23];

An Application for an Order Fixing the Time for Production of Documentary Evidence, filed February 15, 1956 [Clk. Tr. p. 29]; and

A *subpoena duces tecum* directed to Laughlin E. Waters, United States Attorney for the Southern District of California, to effect the objects of the foregoing [Clk. Tr. pp. 30-31].

All the above motions were duly opposed by the Government together with a statement of grounds and supporting authorities [Clk. Tr. pp. 36-68].

On March 12, 1956 these matters were heard by the trial court and certain relief requested by the defendants was granted and certain relief requested by the defendants was denied [Clk. Tr. p. 69]. A Bill of Particulars was filed by the Government on April 25, 1956 [Clk. Tr. p. 70 *et seq.*].

On May 1, 1956 the defendants entered a plea to each of the counts in which they were charged of not guilty [Clk. Tr. p. 74].

Trial was commenced on Monday, August 27, 1956 [Rep. Tr. p. 2] and resulted in a verdict of guilty against Max Shayne as to Counts I, II, III, V, VI, VII, and IX, on September 19, 1956 [Clk. Tr. p. 207] and in a verdict of guilty against Irving Shayne on Count I, on September 20, 1956 [Clk. Tr. p. 208].

A Motion for a New Trial was made on behalf of both defendants, filed September 24, 1956 [Clk. Tr. p. 210] and additional grounds for the motion of new trial on the basis of newly discovered evidence was filed on October 5, 1956 [Clk. Tr. p. 224]. The Motion for New Trial was denied on October 8, 1956 and the defendants sentenced to five years' imprisonment each as to Count I, concurrent sentences of two years each were imposed on all substantive counts of which Max Shayne had been found guilty [Clk. Tr. p. 232]. Judgments of conviction were duly entered against Max Shayne and Irving Shayne on October 8, 1956 [Clk. Tr. pp. 233-234]. A Notice of Appeal was filed on behalf of both defendants on October 8, 1956 [Clk. Tr. p. 235].

Statement of Facts.

Certain contentions of Appellants require a relatively complete statement of facts. The following is the principal evidence upon which the Government relies.

For convenience in organization only, at trial, the exhibits of the Government were numbered in consecutive order followed by the Roman numeral of the count of the indictment to which they were directly related. The position of the Government at all times has been, however, that all the evidence was applicable to the conspiracy, Count One [Rep. Tr. p. 446].

The FHA Title I credit applications of seven home owners were introduced into evidence. The home owners were Henry E. and Martha Green (application in name of Harry and Margret Greene), Earnest C. and Flordie Mae Johnson, John W. and Leona Olsen, David L. and Sylvia A. Hamilton, Eligh S. and Vivian Moore, Mandell and Moshell Drakes, and Archie L. and Viola Thompson [Exs. 5-III, 60-IX, 48-VII, 31-VII, 25-V, 11-IV and 1-II respectively; see also appendix for abstracts of these exhibits].

Each of the foregoing was received by a bank in Los Angeles, California, in the usual course of business, loans were made pursuant thereto and FHA Title I Loan Reports were submitted to secure insurance thereon. The proceeds of the loans were paid to the dealer or construction company from whom the bank had received the papers except for the Moore and Hamilton transactions which were direct to applicant and to whom two cashier's checks each were issued with one each of such checks being endorsed back to the dealer and excepting the Thompson transaction where a single check was given out by the bank because no dealer was involved at all [Greene,

Rep. Tr. pp. 1621-1624, 1729-1730, Exs. 6-III, 95-III, 88-III; Johnson, Rep. Tr. pp. 1642-1644, 1651, 1655, 1738-1739, Ex. 91-IX; Olsen, Rep. Tr. pp. 1637-1638, 1737-1738, Exs. 49-VII, 52-VII; Hamilton, Rep. Tr. pp 1634-1636, Exs. 31-VI, 32-VI, 33-VI, 90-VI; Moore, Rep. Tr. pp. 1626-1629, Exs. 26-V, 27-V, 28-V, 89-V; Drakes, Rep. Tr. pp. 225-228, 241, 245, 248, 262, 263, Ex. 15-IV, 12-IV, 24-IV; Thompson, Rep. Tr. pp. 1607-1609, 1619-1620, 1703, Exs. 94-II, 87-II, and see estimate of Albert Clipper and Son Received by bank on Thompson, Ex. 3-II, Rep. Tr. p. 1620].

Salesmen could secure loans on a direct loan basis by accompanying an applicant-homeowner to the bank [Rep. Tr. pp. 1662-1663, 1665-1666] as in Hamilton, Moore, or Thompson transactions.

Harry R. Nathanson, a stockholder and vice president of Commercial Improvement Company, who acted as sales manager for this company from November of 1951 until just prior to their quitting business in June of 1953 [Rep. Tr. pp. 1064-1065], first saw Max and Irving Shayne in May of 1952 [Rep. Tr. p. 1072].

At a conversation, occurring in May or June of 1952, with Max Shayne, Irving Shayne and Nathanson present, the Shaynes advised Nathanson that they wished to bring in a different type of work than what was ordinarily handled by the Commercial Improvement Company, such as electrical work, plumbing work, carpentry, or painting [Rep. Tr. pp. 1175-1177]. The regular work performed by Commercial Improvement Company was the placing of mastic on the exteriors of homes and they did no other work with their own employees [Rep. Tr. p. 1073].

At the foregoing conversation Nathanson told the Shaynes that they would have to see this different type work through to completion. Nathanson further advised the Shaynes that Commercial Improvement Company had no subcontractors which could perform such work. In reply to this the Shaynes advised Nathanson that they could get the subcontractors, had been using them before, and would see that the work was performed. The Shaynes further advised that they would handle the entire transaction [Rep. Tr. pp. 1178-1179].

Both Max and Irving Shayne started turning in work to the Commercial Improvement Company in June of 1952 [Rep. Tr. pp. 1073, 1077-1078, 1188].

Wherever subcontractors were involved in the accounts brought in by the Shaynes these subcontractors were selected by the Shaynes [Rep. Tr. pp. 1080, 1338]. The Shaynes further had full authority to supervise in full contracts they brought in to the Commercial Improvement Company [Rep. Tr. pp. 1409-1410].

Payment of the invoices of the subcontractors was not made until completion certificates were brought in by the Shaynes which had been signed by the home owners [Rep. Tr. p. 1402]. The note, the contract of the home owner with Commercial Improvement Company, and the credit application of the home owner were all received at one time and forwarded to the lending institution by Commercial Improvement Company [Rep. Tr. p. 1246].

The Greene account was brought to Commercial Improvement Company by the Shaynes and they selected the subcontractor, Smith & Company, whose invoice [Ex. 9-III] was paid by Commercial by its check [Ex. 65-III]. Nathanson had no personal knowledge of this

subcontractor and never sent work out to them. Max and Irving Shayne received $466.66 commission on this account [Rep. Tr. pp. 1080-1088, 1243-1244, 1260-1261, Exs. 7A and 7B-III].

The Drakes account was handled by Commercial Improvement Company and was brought to them by the Shaynes [Rep. Tr. pp. 1089, 1091]. The contract in this matter [Exs. 12 and 12A-IV, Rep. Tr. p. 1093] called for work to be done which would be handled by a subcontractor [Rep. Tr. p. 1090]. Commercial Improvement Company received an invoice by the subcontractor James J. Marsh [Ex. 21-IV]. Nathanson had no knowledge of Marsh [Rep. Tr. pp. 1090-1091]. Marsh was paid by check for the amount set forth in this invoice [Rep. Tr. pp. 1094, 1273, Ex. 23-IV]. A $240 commission was credited on this account to Max and Irving Shayne [Rep. Tr. p. 1280].

The Olsen transaction was also brought to Commercial by the Shaynes [Rep. Tr. p. 1095]. The contract between Olsen and Commercial [Exs. 51-VII and 51A-VII, Rep. Tr. p. 1098] covered work which was not ordinarily performed by Commercial Improvement Company employees [Rep. Tr. p. 1095]. This company received an invoice of the subcontractor, George Angerson, covering this work [see Ex. 54-VII, Rep. Tr. p. 1096], which was paid by Commercial Improvement Company's check [Ex. 66-VII, Rep. Tr. p. 1096]. Nathanson did not know George Angerson and so far as he was aware, Angerson had never been to the office [Rep. Tr. pp. 1096, 1103]. A $400 commission was paid by Commercial Improvement Company to the Shaynes' credit on this account [Rep. Tr. p. 1306].

Mr. Novak, president of Commercial Improvement Company, corroborated Nathanson in respect to the Shaynes' selecting Angerson as a subcontractor rather than the Commercial Improvement Company selecting him. Novak stated that he had never seen or known Angerson [Rep. Tr. pp. 2032-2033].

On all three of the foregoing accounts of Commercial Improvement Company the Title I credit applications were brought in by the Shaynes and forwarded to the bank [Rep. Tr. pp. 1098-1099, 1100-1103].

The Commercial Improvement Company also handled the Johnson transaction, brought to them by the Shaynes [Rep. Tr. pp. 1106-1107]. An original credit application was received by them [Rep. Tr. pp. 1128-1129], and the Company also received an invoice of the subcontractor, George Angerson [Rep. Tr. p. 1130, Ex. 63-IX]. Commercial Improvement Company drew two checks in relation to this account. One check was in payment of the foregoing invoice of George Angerson [Rep. Tr. pp. 1131-1132, Ex. 57-IX] and the other was drawn in favor of the Johnsons in the amount of $800, which appears to be in payment of the second paragraph of the contract between the Johnsons and Commercial [Rep. Tr. p. 1129, Ex. 62-IX; Rep. Tr. pp. 1133-1134, Exs 61-IX and 61A-IX].

In addition to the foregoing Commercial received, in the usual course of business, documents listed below. In each instance, the account was one that had been brought to Commercial Improvement Company by the Shaynes, the subcontract was one selected by the Shaynes, and the documents were the invoice of the subcontractor and the check of Commercial paying the invoice as follows:

Andrew Burton account [Rep. Tr. pp. 1137-1138, 1140-1141, Exs. 68-I and 69-I]. The Shaynes were shown to have received a $280 commission on this transaction [Rep. Tr. pp. 1206-1207].

Harrison M. Black account [Rep. Tr. pp. 1139-1140, 1146-1148, 1309, Exs. 71-I and 70-I].

Herrema account [Rep. Tr. pp. 1148, 1150-1151, 1326, Exs. 72-I and 73-I].

Sherman Green account [Rep. Tr. pp. 1149, 1152, 1168, Exs. 74-I and 75-I].

Lessie House account [Rep. Tr. pp. 1168-1170, Exs. 76-I and 77-I].

Blaine Selby account [Rep. Tr. p. 1170, Exs. 78-I and 79-I].

H. C. Cooper account [Rep. Tr. pp. 1173-1174, Exs. 80-I and 81-I].

The foregoing exhibits will be referred to later in this statement of facts, particularly in relation to testimony of Mr. Mesnig of the F.B.I. laboratory.

Sponseller & Sons was a partnership engaged in general home construction [Rep. Tr. pp. 648-649]. Max and Irving Shayne worked for them from the early part of 1952 through the first part of 1953 as salesmen, selling jobs in the home construction field [Rep. Tr. pp. 649-650, 661]. The Shaynes worked together on all jobs they turned in to Sponseller and they shared commissions equally [Rep. Tr. p. 743]. They were paid commission on each job, receiving two-thirds of the profit and Sponseller receiving one-third [Rep. Tr. p. 650]. The Shaynes shared equally between themselves in all jobs submitted to Sponseller [Rep. Tr. p. 651A].

Mr. Sponseller identified the Moore account [Rep. Tr. p. 653, Ex. 29-V]; the Hamilton account [Rep. Tr. pp. 654-655, Ex 35-VI]; and additional accounts of Benjamin Dickson (Dixon) [Rep. Tr. p. 655] and Ocie Larks [Rep. Tr. p. 655], as ones in which the Shaynes had picked the subcontractors which were to perform all or a part of the work [Rep. Tr. pp. 662, 677, 724].

In the Moore transaction, Sponseller had received an agreement [Ex. 43-V], a release of lien [Ex. 42-V], and a statement of invoice [Ex. 40-V] purportedly signed by the subcontract George Angerson. In response to the invoice, Sponseller had made payment by its check [Ex. 41-V]. Irving and Max Shayne were the salesmen that brought this account to Sponseller [Rep. Tr. pp. 669-670, 673-674]. The credit application on this account was sent to the bank [Rep. Tr. p. 725].

The Hamilton transaction was an account secured by the Shaynes for Sponseller [Ex. 35-VI and copy thereof, Ex. 35A-VI, Rep. Tr. pp. 675, 699-700]. For this account Sponseller received an invoice of a subcontractor by the name of Louis Perlman, Exhibit 36-VI [Rep. Tr. p. 676]. Sponseller paid the invoice by check [Ex. 39-VI, Rep. Tr. p. 676]. The credit application was sent to the bank [Rep. Tr. p. 725].

There were two parts to the work to be performed on the Hamilton home. The contract with Sponseller called for exterior painting or mastic job [see Ex. 35-VI] and this was done by a subcontractor selected by Sponseller, but the linoleum work was to be performed by a subcontractor picked by the Shaynes [Rep. Tr. p. 704]. No inspection was made by Sponseller as to whether or not the linoleum was placed in the premises [Rep. Tr. p. 705].

The Hamilton work would only be checked as to the painting by Sponseller [Rep. Tr. p. 736].

In the Benjamin Dickson (Dixon) account, a job secured by Max and Irving Shayne, the invoice of the subcontractor, George Angerson [Ex. 45-I] and the check in payment thereof [Ex. 44-I] were identified by Mr. Sponseller [Rep. Tr. pp. 680-684].

The Ocie D. Larks account was a job secured for Sponseller by Max and Irving Shayne [Rep. Tr. p. 681]. An invoice was received by Sponseller from George Angerson [Ex. 47-I] and a check was made in payment therefor [Ex. 46-I, Rep. Tr. p. 685]. This subcontractor was selected by Max and Irving Shayne [Rep. Tr. p. 686].

Earl Sponseller had never seen George A. Angerson and was not acquainted with him [Rep. Tr. p. 686].

All four of the foregoing transactions with Sponseller were FHA transactions [Rep. Tr. p. 687].

George F. Mesnig, a qualified examiner of questioned documents for the FBI [Rep. Tr. p. 1517] examined the following subcontractors' invoices received on the accounts of the dealers as listed:

Exhibit 9-III, Smith & Company, Greene account, Commercial Improvement Company.

Exhibit 68-I, George Mitchell, Burton account, Commercial Improvement Company.

Exhibit 78-I, George Angerson, Blaine Selby account, Commercial Improvement Company.

Exhibit 77-I, George Angerson, Lessie House account, Commercial Improvement Company.

Exhibit 74-I, George Angerson, Sherman Green account, Commercial Improvement Company.

Exhibit 73-I, George Angerson, Herrema account, Commercial Improvement Company.

Exhibit 70-I, George Angerson, Harrison Black account, Commercial Improvement Company.

Exhibit 63-IX, George Angerson, Johnson account, Commercial Improvement Company.

Exhibit 40-V, George Angerson, Eligh Moore account, Sponseller & Sons.

Exhibit 45-I, George Angerson, Ben Dickson (Dixon) account, Sponseller & Sons.

Exhibit 47-I, George Angerson, Ocie Larks account, Sponseller & Sons.

Exhibit 54-VII, George Angerson, John Olsen account, Commercial Improvement Company.

Exhibit 80-I, George Angerson, H. Cooper account, Commercial Improvement Company.

In the opinion of Mr. Mesnig, all the foregoing subcontractors' invoices were prepared on one typewriter [Rep. Tr. pp. 1520, 1521, 1536-1537, 1565].

The George Angerson invoices bear address 1617 South Arlington and telephone number RE 5610; the George Mitchell invoice bears address 10822 Croesus Avenue and telephone number LO 9-5797, and the Smith & Company invoice bears address 816 E. Jefferson Street and telephone number CE 2-6950 [see foregoing exhibits].

In connection with Angerson signatures, Mr. Mesnig also testified that a subcontract agreement [Ex. 42-V], a lien release [Ex. 43-V], and ten checks drawn payable to George Angerson by the Commercial Improvement Company and Sponseller & Sons in payment of the foregoing invoices, *bore at least four different signatures or endorsements of the name George Angerson* [Rep. Tr.

pp. 1538-1539]. These exhibits, grouped by Mesnig according to the different individuals writing the signature or endorsement George Angerson, were:

Group I —Exhibits 72-I, 43-I, 42-I.

Group II —Exhibits 79-I, 76-I, 66-VII.

Group III—Exhibits 75-I, 71-I.

Group IV—Exhibit 44-I.

In addition to the foregoing, Angerson signatures on Exhibits 46-I, 67-IX and 81-I could not definitely be identified with any of the first four groups [Rep. Tr. pp. 1539-1541, 1550-1553].

The Government offered evidence that it had made an extensive but unsuccessful attempt to locate George Angerson [Rep. Tr. pp. 1593-1600].

George Mitchell was called to the stand and testified that he resided at 10822 Croesus Avenue, Los Angeles, and had resided at this address ever since 1943 or 1944 [Rep. Tr. pp. 1426, 1440]. Mr. Mitchell was shown Exhibit 68-I which bears his name and his address, a subcontractor's invoice heretofore identified. Mitchell testified that he received a stack of these forms from Max Shayne on an occasion when Irving Shayne was also present [Rep. Tr. pp. 1427, 1436-1437, 1448]. Max told Mitchell to use the form in his business, but Mitchell had never asked for them and never used any of them [Rep. Tr. pp. 1427-1428]. The signature on Exhibit 68-I, the invoice, was not that of Mitchell [Rep. Tr. p. 1428].

He had, however, worked on the premises covered by this invoice at 1829 East 111th Street, but had not worked on these premises for Max Shayne, having done the work for Jim Gamble when the house was first being constructed [Rep. Tr. pp. 1429-1430, 1449, 1441].

On the dealer's check in payment for this invoice, Exhibit 69-I, the endorsement George Mitchell was not signed by the witness George Mitchell [Rep. Tr. p. 1431]. Mr. Mitchell further testified he had never owned a typewriter nor used one [Rep. Tr. pp. 1437-1438], and he further testified that the work he did on the house covered by the invoice was done before he had met the Shaynes [Rep. Tr. p. 1457].

Charles Neiberg ran a service station in 1952 and Max Shayne and Irving Shayne were his customers [Rep. Tr. p. 1474]. When shown Exhibits 65-III, 66-VII, 79-I and 76-I, which were checks of Commercial Improvement Company to Smith & Company, and to George Angerson, subcontractors, Neiberg testified that his signature appears as the second endorsement on the reverse side [Rep. Tr. p. 1475]; that Max Shayne brought these checks to him and asked to have them cashed while Irving Shayne was present [Rep. Tr. p. 1476]. Charles Neiberg didn't cash the checks himself but took them to the bank with Max, with Irving Shayne coming along once or twice [Rep. Tr. pp. 1476, 1493].

The endorsement "George Angerson" on the three checks made payable to Angerson were signed by Neiberg. After cashing these checks at the bank the proceeds were given to Max [Rep. Tr. pp. 1476-1477]. Neiberg didn't know George Angerson [Rep. Tr. pp. 1477, 1488].

When shown Exhibit 69-I, a Commercial Improvement check payable to George Mitchell, a subcontractor, Neiberg testified that he signed that name [Rep. Tr. p. 1478]. Neiberg recalled that the bank wouldn't cash this check for some reason when it was presented, and so it was given back to Max Shayne [Rep. Tr. pp. 1478-

1479, 1492-1493]. Neiberg didn't know George Mitchell and had seen him for the first time when he was a witness on the stand.

All the checks were cashed under similar circumstances, with the exception of the Mitchell check being returned to Max, over a period of a few months in 1952 [Rep. Tr. p. 1485]. Neiberg also testified that one endorsement is in blue ink and one endorsement is in black because he used two pens, his own and Max Shayne's [Rep. Tr. pp. 1487, 1492-1494]. All checks were signed at the gas station [Rep. Tr. pp. 1495-1496].

In regard to the Smith & Company invoice, Lizzie B. Perry, who had lived at the address shown for the subcontractor on the invoice, for nine years, recalled only one roomer during that period who lived there by the name of Smith and that was Alvin P. Smith. Perry had known Max and Irving in 1952 and they had used her telephone, the number of which was on the invioce [Rep. Tr. pp. 1225-1228].

The Alvin P. Smith, referred to above, testified he lived at this address during 1952, never did business as Smith & Company, and didn't know the Shaynes. He did not recognize the invoice [Rep. Tr. pp. 1233-1234].

In June of 1952, Max and Irving Shayne called upon Henry E. Green and Martha Green [Rep. Tr. pp. 99-100, 105]. A conversation took place between the Shaynes and the Greens [Rep. Tr. pp. 105-106]. Mr. Green told both the Shaynes that he owed six to eight payments on his home [Rep. Tr. pp. 103-104], that he had not been regularly employed from 1949 to June of 1952 [Rep. Tr. pp. 104, 150-151] and that he needed $800 to get his home out of foreclosure [Rep. Tr. pp. 106-107, 109]. Max Shayne told Green that he would

get him $800 if Green would agree to pay back $1600 [Rep. Tr. p. 109].

Some time later both Max and Irving Shayne came to Green's house and Green was given eight one-hundred dollar bills by Max [Rep. Tr. pp. 112-113]. Mr. Green testified there was no conversation with the Shaynes about work to be done on his home and in fact no work was ever done [Rep. Tr. p. 118]. When shown the Smith & Company invoice [Ex. 9-III], Mr. Green stated the work address was that of his home as of June 1952 but none of the work listed on said invoice had ever been performed [Rep. Tr. pp. 121-122].

Green testified that he was never asked to sign any papers for the loan [Rep. Tr. p. 111] but that his wife signed some papers the day they received the eight one-hundred dollar bills [Rep. Tr. p. 113]. Mr. Green further denied that FHA Title I credit application [Ex. 5-III] contained genuine signatures of either himself or his wife [Rep. Tr. p. 117]; denied that the contract with Commercial Improvement Company [Exs. 7A-III and 7B-III] was signed by either him or his wife [Rep. Tr. pp. 120-121].

Approximately three weeks after receiving the eight one-hundred dollars bills, Mr. Green received a telephone call from a bank. He called Max Shayne on the telephone and told him about the call from the bank and that he had received a book and contract from the bank [Rep. Tr. p. 124]. Green stated that he told Max that he did not have an FHA contract with anybody and that Max told him it was all right, just go ahead and make the payments. There was further discussion about the contract and payment book being in the name of Harry Greene and Margret Greene and Max told Green in ef-

fect that the difference in the names was not important [Rep. Tr. p. 125].

The FHA Title I credit application calls for improvements to the home costing $1600 [Ex. 5-III] and shows the address of the Greens.

Donne Mire, a handwriting expert for the defense, gave his opinion that Henry Green had signed the documents in the Greene matter, but from certain matters raised on cross-examination the jury could have disbelieved this [Rep. Tr. pp. 2203-2204, 2213-2216, 2221].

Earnest Cornell Johnson testified that in June of 1952 he had conversations with Max Shayne about a loan which occurred at his residence located at 10525 Avalon Boulevard, Los Angeles, California [Rep. Tr. p. 909]; the substance of which was to the effect that a Mrs. Whitfield, now Mrs. Martin, a member of the church in which Mr. Johnson was pastor, wanted a loan [Rep. Tr. p. 910]; that Max Shayne had taken Mrs. Whitfield's credit application [Rep. Tr. pp. 913-914] but that her credit was inadequate. Max advised Johnson that the loan could be made if Johnson would make application for it [Rep. Tr. pp. 915-916, 989].

Max Shayne was advised that $800 was needed to pay an overdue indebtedness on the first and second trust deeds on Whitfield's property [Rep. Tr. pp. 918-919, 992]. After Johnson had agreed to make the loan application for Mrs. Whitfield, he signed some papers [Rep. Tr. p. 919].

Johnson identified his own and his wife's signatures on Exhibit 60-IX, the credit application. He stated that it had been signed when present with Shayne but was not completed [Rep. Tr. pp. 921-922, 1034]. Johnson fur-

ther testified that his wife and himself had signed Exhibit 61-IX at the time they were talking to Shayne [Rep. Tr. p. 923]. All documents upon completion or signing were taken by Max Shayne [Rep. Tr. pp. 928, 947] and all documents had been filled in by Max Shayne [Rep. Tr. p. 930].

Exhibit 60-IX, the Title I credit application, shows the property to be improved as 1239 East 127 Street and sets out work to be performed at a cost of $1300.

Exhibit 61-IX is a contract between Commercial Improvement Company and the Johnsons setting forth work in two paragraphs for a total contract price of $1300. The first paragraph requires the painting of the interior of the house and the second paragraph requires the remission to the Johnsons of $800 cash for an additional room.

The subject of improvements to Johnson's home was not mentioned but the painting of the interior of the Whitfield home was a subject of discussion between Johnson and Max Shayne [Rep. Tr. pp. 934-935, 945, 1011]. The portion of the contract with Commercial Improvement Company [Ex. 61-IX] circled in red, which is the second paragraph calling for the remission of $800 to Johnson, was not written on this document at the time he signed it [Rep. Tr. pp. 936, 971-972]. No additional room was put on the Whitfield house and there was no conversation on this subject with Max Shayne [Rep. Tr. pp. 951, 960-961]. However, Johnson intended to do some painting on the home located at 1239 East 127th Street [Rep. Tr. p. 946].

Max Shayne told Johnson that FHA money could be used to pay up first and second trust deeds and that it

did not have to be used for improvements [Rep. Tr. pp. 954, 1013].

Some time after the early conversations with Max, Johnson received $800 in cash from him after Johnson and his wife had endorsed Exhibit 62-IX, a check of the Commercial Improvement Company for that sum, which check was delivered to the Johnsons by Max [Rep. Tr. pp. 947, 1019]. Johnson used six to seven hundred dollars of the $800 received to pay on deeds of trust on the Whitfield property. The balance of the money was used to paint the interior of this property [Rep. Tr. p. 948].

Johnson testified he had never known a person by the name of George Angerson [Rep. Tr. p. 949], a subcontractor, identified above with this transaction, whose invoice covers the painting [Ex. 63-IX].

John Olsen, in July of 1952 lived at 2606 E. 121st Street, Willowbrook, California, where he had a discussion with Max Shayne [Rep. Tr. p. 770]. They talked about borrowing money and Max said he could arrange a loan but it would cost Olsen double. Olsen advised Shayne that he needed $600 [Rep. Tr. p. 773] to stop the foreclosure on his home and Max responded that he could probably get the money [Rep. Tr. pp. 774-775].

Approximately a week later, Olsen saw Max Shayne again [Rep. Tr. p. 777]. At this time, Olsen and his wife signed Exhibit 48-VII, a Title I credit application, dated July 12, 1952, calling for certain work to be performed on the home as follows: "Exterior Painting, Repair Plumbing" for a cost of $1200 [Rep. Tr. p. 779, Ex. 48-VII]. Other than a signature, this document was not filled in by either Olsen or his wife [Rep. Tr. p. 779].

Olsen and his wife also signed the bank note [Ex. 49-VII, Rep. Tr. p. 780] and a contract with Commercial Improvement Company [Exs. 51A-VII and 51-VII] but this contract was not filled in by either Olsen or his wife [Rep. Tr. pp. 781-782].

All the foregoing documents were given to Max Shayne [Rep. Tr. p. 783] after he had said they were necessary [Rep. Tr. p. 792]. In further conversations Max Shayne told Olsen that he, Max, would make the payments on Olsen's mortgage which were approximately $600. Olsen received in cash approximately $60 from Max [Rep. Tr. pp. 784-785, 795]. During these converastions, Max also told Olsen that if anybody came out to do improvements on the home, Olsen was to say they had already been done or not to let them do anything. No plumbing or painting had ever been done on the house except for $20 to $30 worth of painting performed by Olsen himself in about a week's work [Rep. Tr. pp. 786, 826].

Exhibit 54-VII, an invoice on the letterhead of George Angerson, dated July 17, 1952, called for the same work as in the foregoing contract and Title I credit application, which purports to acknowledge payment of $600 for such work being performed [see Ex. 54-VII], was exhibited to Olsen and he stated that none of the work listed was ever performed on his home [Rep. Tr. p. 794]. Olsen did not know George Angerson and Angerson never did any work on his home [Rep. Tr. p. 790].

Olsen testified that the initial meeting with Max Shayne came about after he had gone to Southwest Realty Company to secure a refinancing of his home and they advised him they would send out the "Money Man." Thereafter, in approximately a week, May Shayne came to Olsen's home [Rep. Tr. p. 809].

Evidence was introduced that showed a payment of $529.30 on Olsen's mortgage was made by a check drawn on Max Shayne's personal account [Rep. Tr. pp. 848-855, 879-883, 886-892, Exs. 56-VII, 57A-VII, 57B-VII, 55-VII, 58-VII].

Sylvia Hamilton and David L. Hamilton, husband and wife, met Max Shayne at their home in September, 1952, at a time when they resided at 17440 Tiara, Encino, California [Rep. Tr. pp. 391-392, 477-479]. The Hamiltons had a conversation with Max Shayne in which they advised him that they wished to borrow $700 to pay their bills, including delinquent house payments. Max advised that he could get the money if they had some improvements made to their home. The Hamiltons decided to have the outside of the house painted [Rep. Tr. pp. 394-398, 404, 428-429, 480-484, 506]. They signed a Title I credit application and a contract with Sponseller & Sons [Rep. Tr. pp. 400-401, 429-431, 484, Exs. 31-VI, 35-VI].

One paragraph in the above contract was not discussed with Max Shayne and the work was never performed. This paragraph of work calling for interior work was added to the contract after it was executed and the same is true of the credit application. The added portion deals with putting linoleum in the kitchen and bath. No such work was ever performed on these premises. Only the exterior of the house was painted [Rep. Tr. pp. 429-431, 433, 434, 485-487, 496, 497-498, 501, 419, Exs. 31-VI, 35-VI].

Max took the signed papers away with him [Rep. Tr. pp. 485-487, 404].

At the time of their meeting the Hamiltons told Max Shayne that they were two payments behind on the house.

Max gave the Hamiltons $100 cash to cover the Hamiltons' personal check for $102 which was delivered to Max and which Max said he would pay on the back house payments [Rep. Tr. pp. 407-408, 410-411, 493, Ex. 34-VI, personal check of Hamiltons].

After Max Shayne telephoned and said the loan had been approved [Rep. Tr. pp. 513-515], the Hamiltons went to Leimert Park Branch of Citizens National Bank where they met a man that Mrs. Hamilton could not identify but which David L. Hamilton said was Irving Shayne. The Hamiltons were told not to say anything, just sign papers, which they did, and received two checks; one for $880 and one for $700. The $700 check was cashed by the Hamiltons and the $100 advanced by Max was paid back to Irving [Rep. Tr. pp. 411-416, 489-490, 535, 490-493].

The $600 left out of the $700 check was used to pay personal bills [Rep. Tr. pp. 416-420, 426-427, 498-499].

The $880 check was endorsed to Sponseller and given to Irving Shayne [Rep. Tr. pp. 490-493].

Louis Perlman had known Max and Irving Shayne since 1950 and had done a number of different jobs for them [Rep. Tr. p. 602]. Perlman identified the invoice [Ex. 36-VI], which purports to cover the work of laying linoleum in the Hamilton home as being an estimate that he made up for such work after receiving the dimensions over the phone from either Max or Irving Shayne [Rep. Tr. p. 605] but he did not do the work [Rep. Tr. p. 606] as determined by his physical inspection of the premises only a few days before trial [Rep. Tr p. 607].

Perlman stated that he had never received payment for this job and that he endorsed the check in payment of

The check in payment of this $1030 [Ex. 23-IV] is not endorsed by Marsh, the endorsement has the wrong spelling for his name, and the check was not cashed by Marsh [Rep. Tr. pp. 212-213].

Marsh knew the Shaynes did business under the name "Money Man" and had seen them use the same identical card as given to the Drakes. This business card has the same telephone number as the one Marsh had on his work-books for the Shaynes [Rep. Tr. pp. 214-217, Exs. 14-IV, 22-IV].

Archie L. Thompson and his wife, Viola Thompson, resided in a house behind a restaurant which was located at 10962 South Avalon Boulevard in the spring of 1953 and they owned a home at 5126 Towne Avenue, Los Angeles which was the property to be improved as shown by their credit application [Rep. Tr. p. 3, Ex. 1-I]. While Archie was working on the restaurant roof Max and Irving Shayne arrived together and conversed with him asking if he needed money and Thompson told them that he did to complete the work on the restaurant [Rep. Tr. pp. 4-7, 40].

A day or so later, the Thompsons signed a Title I credit application [Ex. 1-I] after it had been filled in by Viola at the Shaynes' direction [Rep. Tr. pp. 8, 10-13, 15-16, 43, 59-61, 78]. The Shaynes then told the Thompsons to take the credit application to Citizens Bank, Leimert Park Branch, together with an estimate that they furnished of Albert Clipper & Son, of work to be done on the house on Towne Avenue [Rep. Tr. pp. 16-17, 20, Ex. 3-II].

Two or three days later the Thompsons went to the bank and received a check for approximately $2300 which

was deposited to their account at the Bank of America to cover Viola Thompson's personal check for $895 which she delivered to Irving Shayne [Rep. Tr. pp. 17-19, 21-24, 47, 50, 54-55, 56, 62, 64-65, Exs. 4-II, 94-II]. The $895 was a fee for securing the loan [Rep. Tr. p. 75] on which there had been prior conversation between both Shaynes and the Thompsons [Rep. Tr. pp. 24-25, 29].

None of the money was to be used on the house on Towne Avenue [Rep. Tr. pp. 16, 28, 52-54] nor was any of the work in the Albert Clipper estimate performed by Clipper or anyone else, this work having been done by Archie Thompson himself at an earlier date [Rep. Tr. pp. 26-28, Ex. 3-II].

Irving Wolf, a brother-in-law to the Shaynes, received the $895 check [Ex. 4-II] from one of the Shaynes, cashed it, and took the money to the home of one of the Shaynes. He stated he did ont recall which Shayne he received it from and by reason of their homes being side by side he did not remember which one he delivered it to [Rep. Tr. pp. 88-89].

The Thompsons' bank account at Bank of America, for April 1953, showed a balance of $16.04 just prior to a deposit of $2395 as of April 29, 1953. On April 30, 1953, $895 was withdrawn from this account [Rep. Tr. pp. 93-97].

In the spring of 1954 there were several meetings and conversations among Irving Shayne, Max Shayne, Louis Novak, president of Commercial Improvement Company, and Meyer Miller, which occurred after Novak and Miller had visited the Los Angeles FHA office. The Shaynes were asked whether or not work was done on the Green (Greene) and Olsen jobs. At first they said the work

was done, but when Miller confronted the Shaynes with what Green and Olsen had told the FHA, the Shaynes admitted that no work was performed, and no work was to be performed.

Miller demanded that the Shaynes repurchase the Green and Olsen notes. The Shaynes offered to put up two-thirds of the money if Commercial would pay the other third. Miller agreed.

At a later prearranged meeting the Shaynes delivered a cashier's check to Novak and Miller but refused to accompany them to the FHA office. The Commercial Improvement Company share was $1000 made up by Miller, Novak and Nathanson. Payment was made to the FHA [Rep. Tr. pp. 1774-1784, 1807-1808, 1811-1815, 1788, 1790, 1823, 1830, 1832-1836, 1839, 1846-1850, 1853, 1871-1872].

In June of 1954, Max Shayne came to Henry E. Green's home and said that he had straightened out the FHA loan and had paid it [Rep. Tr. pp. 125-128]. Shortly after his conversation, Henry Green received through the mail a payment book for $1100 [Exs. 10A-III and 10B-III, Rep. Tr. pp. 126-127]. This payment book bears Max Shayne's name, home address, and phone number, calls for payments of $20 per month at six per cent for a total of $1100—shows a loan made on May 13, 1954 [Exs. 10A-III and 10B-III].

Summary of Argument.

I.

Rulings on Preliminary Motions (Appellants' Specifications V and VI).

II.

Proof and Pleading of Conspiracy (Appellants' Specification I).

III.

Submitting Indictment to Jury Without Submitting Bill of Particulars (Appellants' Specification II).

IV.

Instructions on Conspiracy (Appellants' Specifications III and X).

V.

Verdicts Contrary to Law and Evidence; Denial of Judgments of Acquittal (Appellants' Specifications 1X(a), (b), (c) and (d), and XII).

VI.

Rulings on Motion for New Trial (Appellants' Specifications XI).

VII.

Constitutional Questions (Appellants' Specifications IV and VII).

VIII.

Two Witness Rule on False Statements (Appellants' Specification VIII).

ARGUMENT.

I.

Rulings on Preliminary Motions (Appellants' Specifications V and VI).

A. The Bill of Particulars.

The granting or denial of a bill is discretionary with trial court and his ruling will not be disturbed in the absence of a showing of prejudice.

Wong Tai v. United States (S. Ct., 1926), 273 U. S. 77 at 82;

United States v. Dilliard (2d Cir., 1938), 101 F. 2d 829 at 835;

Olmstead v. United States (9th Cir., 1927), 19 F. 2d 842 at 844;

Sawyer v. United States (8th Cir., 1937), 89 F. 2d 139 at 140, 141;

United States v. McKenna (1954), 126 F. Supp. 831;

Fischer v. United States (10th Cir., 1954), 212 F. 2d 441 at 445;

Schino v. United States (9th Cir., 1953), 209 F. 2d 67 at 69;

Legatos v. United States (9th Cir., 1955), 222 F. 2d 678 at 681.

The ruling, insofar as the bill was denied, was proper because the defense was attempting a full discovery of the Government's case, to reach its evidence, to secure a list of Government witnesses or to secure information from the Government which was equally available to defendants.

United States v. Pillsbury Mills (1955), 18 F. R. D. 91 at 93, 94;

Wong Tai v. United States, supra;

United States v. Shindler (1952), 13 F. R. D. 292 at 295;

United States v. McKenna, supra;

United States v. Brennan, 134 F. Supp. 42;

United States v. Wilson (1054), 72 F. Supp. 812, aff'd 176 F. 2d 184, cert. den. 338 U. S. 870;

Hemmelfarb v. United States (9th Cir. 1949), 175 F. 2d 924, cert den. 338 U. S. 860.

In the absence of surprise there is no prejudice.

United States v. Dilliard, supra, at 835;

Rubio v. United States (9th Cir., 1927), 22 F. 2d 766, 767-768;

Kaufman v. United States (6th Cir., 1947), 163 F. 2d 404 at 408;

Wong Tai v. United States, supra, at 82;

Shino v. United States, supra, at 70;

Lucas v. United States (Dist. Col. 1939), 104 F. 2d 225.

B. Motion for Discovery and Inspection—Rule 16.

Insofar as the Government had obtained anything from the defendants, this motion was granted by the trial court [Clk. Tr. p. 69]. The denial of the balance was within the discretion of the trial judge. There was no showing that any additional matter had been acquired by process or seizure [Clk. Tr. pp. 23-24].

Monroe v. United States, (D. C. Cir. 1956), 234 F. 2d 49;

United States v. Kiamie (1955), 18 F. R. D. 421;

United States v. Peltz (1955), 18 F. R. D. 394.

C. Subpoena for Production of Documentary Evidence and Objects—Rule 17(c).

Documents which are subject to subpoena under subdivision (c) of Rule 17, Federal Rules of Criminal Procedure, are not also subject to inspection by defendant as a matter of right, but only upon a showing of good cause.

United States v. Iozia, 13 F. R. D. 335.

Production of documents pursuant to Rule 17(c) may be compelled only if the documents are admissible in evidence.

Bowman Dairy Co. v. United States (1951), 341 U. S. 214, 219, 221;

United States v. Iozia (D. C. N. Y., 1952), 13 F. R. D. 335, 338.

Rule 17(c) may not be used to compel the production of the Government's evidence without due reason being shown, nor can it be the vehicle for a general "fishing expedition".

Bowman Dairy Co. v. United States, supra, at 221;

United States v. Mesarosh et al. (D. C. Pa., 1952), 13 F. R. D. 180, 183;

United States v. Iozia, supra, at 340;

United States v. Maryland & Virginia Milk Producers' Assn. (D. C. D. C., 1949), 9 F. R. D. 509, 510;

United States v. Muraskin, et al. (2d. Cir., 1938), 99 F. 2d 815, 816;

United States v. Rosenfeld (2d Cir., 1932), 57 F. 2d 74, 76-77.

In any event, the pretrial production under *subpoena duces tecum* is discretionary with trial court.

United States v. Schiller (2d Cir., 1951), 187 F. 2d 572 at 575;

United States v. Schneidermann (1952), 104 F. Supp. 405;

United States v. Ward (1954), 120 F. Supp. 57 at 59;

Monroe v. United States, supra.

Appellant refer to the *Jencks* case in their argument on these points. *Jencks* requires only the production of statements taken from witnesses after they have been called to the stand at trial.

Jencks v. United States (S. Ct., 1957), 353 U. S. 657.

In the one instance in this case where defense demanded such a statement it was furnished to them [Rep. Tr. 1046-1047, 1049, 1052].

Generally, on trial the defense was given every opportunity to examine at length all files and documents [see for example Rep. Tr. pp. 1066-1067, 1124, 1164-1165; line 11 of p. 22].

II.

Proof and Pleading of Conspiracy (Appellants' Specification I).

The appellant's first point is that the two defendants were "charged with a series of separate and multiple little conspiracies". This is a plain misstatement of the record. The indictment charges a single continuing conspiracy. There was no proof offered on multiple conspiracies. There were no instructions offered on multiple conspiracies [Rep.

Tr. pp. 2424-2434, 2453-2454, 279]; and no argument was made that the defendants were enmeshed in multiple conspiracies.

The indictment, Count One, charges a single conspiracy with great particularity, setting forth at length and in detail the period of time that the conspiracy was in effect, its mode of operation and method of working, its object, and a number of simple explicit overt acts (Appendix).

Max and Irving Shayne together are charged with being conspirators in this single conspiracy.

Unlike the *Kotteokos* case (*Kotteokos v. United States,* 328 U. S. 750) where a *single* manipulator of FHA Title I loans dealt separately and distinctly with each of a number of individual home owners, the case at bar is based upon a charge that Max and Irving Shayne were co-conspirators in a conspiracy to submit false claims to the United States in respect to FHA Title I loans knowing that the money so obtained would not be used for home improvements. At no time on the trial of this cause did the Government, the defense, or the court proceed upon the theory that the charge, *i.e.,* the indictment, set forth anything but a single, well defined conspiracy.

Nor is there a variance here between the pleading and the proof as to the single conspiracy charged. As shown by the foregoing Statement of Facts, Max and Irving Shayne shared jointly in the commissions, paid by each of the two dealers involved, for every account on which there was evidence produced at trial. Both appellants were shown to have manipulated the use of sub-contractors' invoices which covered work supposedly performed but not performed on applicant-borrowers' homes, so that the proceeds of checks made payable to such sub-contractors could be diverted from the home improvements set forth

on the credit applications to the personal use of either the Shaynes or the home owners. In some instances the sub-contractors' invoices were created out of "estimates" as in the case of sub-contractors Marsh and Perlman. In other instances the jury could well have believed that the invoices were wholly fictitious. As to these, the sub-contractors' invoices that were typed, the evidence showed that although they came from three different sub-contractors, Angerson, Smith & Company and Mitchell, they were prepared on the same typewriter and were received in connection with accounts handled by the Shaynes for two different construction company dealers, Sponseller & Son and Commercial Improvement Company.

Furthermore the dealers' checks in payment of Smith & Company, Mitchell, and some Angerson invoices were shown to have been endorsed and cashed for the Shaynes by Neiberg. The endorsement on the check in payment of Marsh was also shown to have been forged and it is interesting to note that it is followed by the endorsement "I. Shayne". (See overt acts, Conspiracy count).

Commencing in June of 1952 in the Henry E. Green account, on which the records show the name to be spelled Greene, Max and Irving Shayne were both present at a conversation when Green was told be could have $800 if he would pay back two for one, or $1600. This pattern was repeated with the Olsen transaction where again a loan was made on the basis of a two for one repayment. Both Olsen and Green were trying to keep from having their homes taken on foreclosure.

The record is replete with instances where the home owners were misadvised by the Shaynes as to the requirements for FHA loans such as in the Hamilton, Moore, Johnson and Thompson transactions and the record is also

replete with instances where the Title I credit applications were not filled in at the time they were signed or where extra and unauthorized paragraphs were added to constructions contracts calling for work to be performed which had never been discussed with the home owner such as the Johnson and Hamilton transactions.

In every instance the Shaynes were apprised of the use that the home owners intended for the proceeds of these loans. In the Green, Olsen, Johnson and Hamilton transactions the loan proceeds were, according to the discussions with the applicants, to be used in large part to pay past due indebtedness on real estate. In the Moore, Drakes and Hamilton transactions the money was to be used in part to pay personal and household bills.

Finally the appellants committed jointly the boldest and most outrageous act of this conspiracy. With the Thompsons, in April of 1953, by causing to be placed on the credit application limited credit references and by providing a fictitious estimate on the billhead of Albert Clipper & Son, the Shaynes induced, advised and caused this credit application and estimate to be delivered to a bank which granted a loan thereon. For this service, out of the very proceeds of the loan, pursuant to the Shaynes' agreement with the Thompsons, Irving Shayne collected a fee of $895.

Threaded throughout all the transactions there is a common purpose, a common method of operation, a common object, and a concert of conduct on the part of both Max and Irving Shayne.

Under such circumstances, where the conspiracy is so pleaded, but a single conspiracy is charged.

Nye & Nissen v. United States (9th Cir., 1948), 168 F. 2d 846 at 850, and cases there cited.

And in the face of overwhelming evidence that Max and Irving Shayne were co-conspirators in the single conspiracy charged there is not a variance between pleading and proof particularly where the conspiracy is so well defined.

Nye & Nissen v. United States (S. Ct., 1949), 336 U. S. 613 at 616 and 617.

This situation is not altered because the proof presented applies to both conspiracy and substantive counts.

Nye & Nissen v. United States, supra, particularly at 620.

III.

Submitting Indictment to Jury Without Submitting Bill of Particulars (Appellants' Specification II).

Appellants complain that the indictment was submitted to the jury during its deliberations but the Bill of Particulars which they contend limited its scope was not.

What we have to say under our discussion of the court's instructions is in part applicable here and reference is made to Point IV of this Argument.

However two other propositions answer appellants' point here.

First, whether the indictment or exhibits should be taken to the jury room is within the discretion of the trial court.

Little v. United States (10th Cir., 1934), 73 F. 2d 861, 864, reversed on other grounds;

C. I. I. Corporation v. United States (9th Cir., 1945), 150 F. 2d 85 at 91;

Buckley v. United States (6th Cir., 1929), 33 F. 2d 713 at 717.

The jury should be charged that the indictment is not evidence in the case and such an instruction was given [Rep. Tr. p. 2411].

Secondly, this very matter was brought to the attention of defendants and their counsel in a discussion with the court early in the trial and the court advised that it was his practice to send the indictment to the jury room and the court clearly offered to hear and pass upon any proposed deletions from the indictment the defense cared to present [Rep. Tr. pp. 1121-1122]. We quote the last portion thereof:

> "If there are some parts of this indictment that the defense feels should not be read, advise me and I will consider not reading any portion as to which you think there should be an omission."

No objections or exceptions to this matter were taken at any time thereafter nor did the defense ever advise the court of its position on this question.

Nor was this question raised in a motion for new trial or the argument thereon [Clk. Tr. pp. 210-214; Rep. Tr. p. 2534 *et seq.*].

Appellants should not now be heard to complain.

Holingren v. United States, 217 U. S. 509 at 520.

IV.

Instruction on Conspiracy (Appellants' Specifications III and X).

In each instance that appellants set forth a quotation from the trial court's instruction there is a misquote (Appellants' Br. pp. 4-5, 14). We quote verbatim from the record:

> "While it is necessary that there be two or more conspirators, one of the persons on trial can be found

> to have not been one of the two or more. Now, the case as it has developed here has presented the possibility that many persons other than those on trial might lawfully be found to have been members of a conspiracy. And if you believe one or the other or both of the defendants were members of such conspiracy, then you could return a verdict of guilty as *to such defendant.*" [Rep. Tr. pp. 2453-2454.] (Italics added.)

Appellants complain in their second specification of error that the court instructed the jury in effect that the defendants could be found guilty if they conspired with others, where the Bill of Particulars states that the Government will not contend that there were other conspirators with the defendants. Appellants' position in this regard is that this permitted the jury to find them guilty on a different "charge" than the one against them.

The appellants' position fails to take into account the effect of a Bill of Particulars and the way the matter developed at trial.

First, appellants again confuse the charge against them, which is contained in the indictment, with the proof offered in respect thereto and the proof that could be tendered under the Bill of Particulars. It is to be noted in this regard that the Government did not state in its Bill of Particulars that there were no other conspirators. The Bill of Particulars furnished by the Government contains the following statement: "The Government will not contend at the trial that any other persons were co-conspirators with the defendants;" [Clk. Tr. p. 70], which is tantamount to a statement that the Government *will not offer proof* that there were additional conspirators. The order of the court on the demand for Bill of Particulars

in this respect provided that the Government was to furnish the names of co-conspirators if they were known to the Government and it was in response to this order that the Government so replied [Clk. Tr. p. 69].

Whether the "charge" is changed or not depends upon the purpose and effect of a bill of particulars.

The fundamental purpose of such a bill is to furnish sufficient additional detail, where the indictment is in general terms, so that a defendant may prepare his defense and be protected from a second prosecution for the same offense.

Kaufman v. United States (6th Cir., 1947), 163 F. 2d 404;

Rubio v. United States (9th Cir., 1927), 22 F. 2d 766;

Robinson v. United States (9th Cir., 1929), 33 F. 2d 238;

Stillman v. United States (9th Cir., 1949), 177 F. 2d 607 at 615.

The bill of particulars does not amend the indictment nor change the nature of the charge.

United States v. Lefkoff (1953), 113 F. Supp. 551, 554-555;

Williams v. United States (5th Cir., 1949), 170 F. 2d 319, 320;

Krause v. United States (8th Cir., 1920), 267 Fed. 183.

Nor does it subtract or eliminate matters pleaded.

United States v. Norris (1930), 281 U. S. 619 at 622;

Dunlop v. United States (1897), 165 U. S. 486, 491;

Krause v. United States (8th Cir., 1920), 267 Fed. 183;

United States v. Comyns (S. Ct., 1919), 248 U. S. 349.

Nor add elements omitted.

United States v. Johnson (1944), 53 F. Supp. 167, 172.

On trial, the bill has the effect of limiting the scope of the Government's proof.

United States v. Neff (3rd Cir., 1954), 212 Fed. 297, 309 *et seq.;*

United States v. Pillsbury Mills (1955), 18 F. R. D. 91 at 93;

United States v. Brennan (1955), 134 F. Supp. 42 at 53.

It follows that the "charge" in this case remains the same as set forth in the indictment, *i.e.,* that the defendants were members of the conspiracy described in Count One, notwithstanding the foregoing statement in the Bill of Particulars.

Changes of membership in a conspiracy do not alter or change the fundamental aspect of the conspiracy—conspirators can come and go as long as there are at least two.

Nye & Nissen v. United States (9th Cir., 1948), 168 F. 2d 846, 850;

Marino v. United States (9th Cir., 1937), 91 F. 2d 691 at 696, and cases cited in footnotes 23 through 26.

A criminal conspiracy is essentially the agreement to violate the law in the particulars described with the performance of an overt act thereunder.

Marino v. United States, supra, at pp. 694-695.

It cannot be defined by merely naming a group of people and it has been held that the names of conspirators are not an essential part of the description of the conspiracy.

Leverkuhn v. United States (5th Cir., 1924), 297 Fed. 590.

Where the criminal agreement is described with particularity as to law violated, the time continuing, the mode and method of operation and the objectives, the conspiracy or agreement thus becomes fixed.

Leverkuhn v. United States, supra.

The court's instructions did not allow the jury to convict the defendants of any other conspiracy in this respect than the one charged in the indictment and the jury was so told [Rep. Tr. pp. 2412, 2424-2434, particularly 2429-2430].

Changes in the membership of the conspiracy do not, therefore, change the nature of the charge and it is submitted appellants' cases are not in point.

The Government did not exceed the *limitation of proof* effected by the Bill of Particulars. It did not present evidence nor argue to the jury that there were other conspirators. The defense made no objections to any evidence offered and they at no time claimed surprise by evidence of other conspirators.

It was the defense that expanded the proof beyond the Bill of Particulars.

Time after time in the course of this trial the defense asserted that witnesses presented by the Government were accomplices, that these witnesses were guilty of offenses

which necessarily aided the Shaynes in carrying out their scheme.

The defense theory that others were accomplices of the Shaynes is shown by the nature of the defense cross-examination and the questions asked:

> As to Johnson [Rep. Tr. pp. 1006-1007, 1036-1037]; Olsen [Rep. Tr. pp. 816-817, 835-836, 838-841, and especially 846]; Nathanson of Commercial Improvement Company [Rep. Tr. pp. 1412-1413]; Miller of Commercial [Rep. Tr. pp. 1817-1822]; Novak of Commercial [Rep. Tr. pp. 1856-1857]; Drakes [Rep. Tr. pp. 567-568, 580-581]; Hamilton [Rep. Tr. pp. 451-452, 464-465, 470-474, 508-509, 530-532]; Neiberg [Rep. Tr. pp. 1487-1488, 1492, and especially 1494-1495, 1497-1501];

Or by counsels' direct representations to the court:

> Generally [Rep. Tr. p. 1116]; as to Nathanson of Commercial Improvement Company [Rep. Tr. pp. 1345-1348, 1388]; Novak of Commercial [Rep. Tr. pp. 1856, 1869];

And by instructions they tendered and argued to the court:

> Defense instructions numbered 58, 59 and 60 [Clk. Tr. pp. 192-194] and additional request [Rep. Tr. pp. 2438-2439].

The trial court recognized the change in the scope of the proof. We quote from the instruction complained of, with italics added:

> "Now, the case *as it has developed here* has presented the possibility that many persons other than those on trial might lawfully be found to have been members of a conspiracy."

Under this state of affairs the entire instruction was proper.

This view of the defense approach to the case is substantiated by the fact that the defense did not tender any instruction to the court on this precise point; *they never took exception nor objected to the instruction given;* and they never presented or argued the matter in their motion for new trial [Rep. Tr. pp. 2438-2450, 2534 *et seq.*]. No one could overlook this instruction coming as it did in response to a question from the jury [Rep. Tr. pp. 2453-2454] and yet highly experienced defense counsel did not object and only requested additional instructions on the burden of proof at the time the court gave them opportunity to speak [Rep. Tr. pp. 2494-2495].

Appellants should not now be heard to complain for the first time that the instruction was improper.

Federal Rules of Criminal Procedure, Rule 30;

Benatur v. United States (9th Cir., 1954), 209 F. 2d 734 at 744, cert. den., 347 U. S. 974;

Las Vegas Merchant Plumbers v. United States (9th Cir., 1954), 210 F. 2d 732 at 744, 745;

Kobey v. United States (9th Cir., 1953), 208 F. 2d 583 at 597, 598;

Krembring v. United States (8th Cir., 1954), 216 F. 2d 671 at 673;

Mosca v. United States (9th Cir., 1949), 174 F. 2d 448 at 451;

Brown v. United States (9th Cir., 1953), 201 F. 2d 767 at 770;

Enriques v. United States (9th Cir., 1951), 188 F. 2d 313;

Diehl v. United States (8th Cir., 1938), 98 F. 2d 545 at 547.

Lastly, if the instruction was technically in error it was harmless and non-prejudicial in the face of the overwhelming weight of evidence that the Shaynes conspired directly with each other. Whether in addition the jury found the Shaynes conspired with others is immaterial. The court's attention is directed to the fact that the great bulk of the evidence here that the Shaynes were working together stands wholly uncontroverted.

Federal Rules of Criminal Procedure, Rule 52(a) (18 U. S. C.);

Schowers v. United States (D. C. Cir., 1954), 215 F. 2d 764;

United States v. Spadafora (7th Cir., 1950), 181 F. 2d 957 at 959;

Clark v. United States (8th Cir., 1954), 211 F. 2d 100 at 106;

Tanchuck v. United States (10th Cir., 1937), 93 F. 2d 534, 537;

United States v. Sansone (2nd Cir., 1956), 231 F. 2d 887 at 891;

Neal v. United States (D. C. Cir., 1950), 185 F. 2d 441 at 442.

V.

Verdicts Contrary to Law and Evidence; Denial of Judgments of Acquittal (Appellants' Specifications IX(a), (b), (c) and (d), and XII).

In appellants' point IX(a) they contend that Irving Shayne was acquitted of all overt acts under the conspiracy and therefore is adjudicated not guilty of the conspiracy (Appellants' Br. p. 20). This proposition falls for a number of reasons.

First, overt acts numbered 2, 4 and 6 of Count One had substantial proof offered in respect thereto and no part of the jury's verdicts under the substantive counts is inconsistent with the finding that these overt acts were performed as alleged pursuant to the conspiracy set forth in this count. Only one overt act pleaded need be proved to consummate the conspiracy and the jury was so told [Rep. Tr. p. 2429].

Marino v. United States, supra, at 694.

Furthermore the jury inquired and the court properly instructed that each count was to be considered separately [Rep. Tr. p. 2455]. The verdicts on the various counts of this indictment need not be consistent with each other.

United States v. Petti (2nd Cir., 1948), 168 F. 2d 221 at 224;

Selvester v. United States (S. Ct., 1898), 170 U. S. 262;

Dunn v. United States (S. Ct., 1932), 284 U. S. 390 at 393;

Bell v. United States (8th Cir., 1924), 2 F. 2d 543;

Seiden v. United States (2nd Cir., 1926), 16 F. 2d 197;

Coplin v. United States (9th Cir., 1937), 88 F. 2d 652 at 661;

Stein v. United States (9th Cir., 1946), 153 F. 2d 737, 744;

Pilgeen v. United States (8th Cir., 1946), 157 F. 2d 427, 428;

Robinson v. United States (9th Cir., 1949), 175 F. 2d 2;

United States v. Coplon (2nd Cir., 1950), 185 F. 2d 629 at 633;

Ross v. United States (6th Cir., 1952), 197 F. 2d 660.

The doctrine of *res adjudicata* does not apply here because there was additional and different evidence adduced on the conspiracy count and there were other and different overt acts set forth in the conspiracy count upon which there was separate proof as stated above, there is nothing in this record to preclude the jury from finding one of the different overt acts to have been performed. Or the jury could have found that overt act number two was performed by Max Shayne, as pleaded, pursuant to the conspiracy alleged. If so the jury properly found both Max and Irving guilty of Count One.

United States v. Petti, supra, p. 224.

Counsel's bland assertion in point IX(c) that the false statements were the independent acts of the home owners is contrary to the uncontroverted testimony of nearly all of the home owners, the testimony of both handwriting experts, and nearly all of the corroborative detail of the evidence. See Statement of Facts.

The "two witness rule" requested by appellants is discussed under our argument number VIII.

VI.

Rulings on Motion for New Trial (Appellants' Specifications IV and VII).

A. Claim of Defective Hearing of Juror.

It is apparent from the record that the juror who is claimed to have bad hearing actually answered by nodding on the first poll of the jury [Rep. Tr. p. 2500], although his next answer was not responsive to the court's inquiry. But the juror answered understandingly after the verdict was re-read to him [Rep. Tr. p. 2501].

The court's observations to the effect that the juror was capable of hearing are shown in the record [Rep. Tr. pp. 2505, 2515-2518] and the trial court made specific findings in this regard and concludes the juror heard the evidence [Rep. Tr. pp. 2547-2548].

The denial of a new trial for disqualification of a juror is not an abuse of discretion in the absence of objection before the verdict.

Bush v. United States (5th Cir., 1927), 16 F. 2d 709;

United States v. Nystrom (1953), 116 F. Supp. 771;

United States v. McGrady (7th Cir., 1951), 191 F. 2d 829.

It has been generally held that a party who waits until after the verdict to object to a juror's deafness is deemed to have waived the right to such objection.

United States v. Baker, Fed. Cas. No. 14499 (D. C. N. Y., 1868), 24 Fed. Cas. 953;

Tollackson v. Eagle Grove, 213 N. W. 222, 203 Iowa 696;

Higgins v. Commonwealth, 155 S. W. 2d 209, 287 Ky. 767;

State v. Power (Mo., 1926), 285 S. W. 412;

Lindsey v. State, 225 S. W. 2d 533, 189 Tenn. 355.

In *United States v. Baker, supra,* it was said concerning a partially deaf juror, "on principle, as well as on authority, nothing that is a cause of challenge to a juror before verdict can be used to set aside a verdict, as for a mistrial, even though the cause of challenge was unknown to the party when the jury were sworn."

The reason for this rule is said to be that the defendant has the opportunity to discover the defect and so cannot complain unless he can show the juror's hearing was so bad that it substantially prejudiced the defendant's rights.

B. The Incident of One Juror Falling Asleep.

The trial court's observations of this matter are shown [Rep. Tr. pp. 2548-2555] and the situation obtaining at the time is that the juror slept about 30 seconds [Rep. Tr. p. 2555] during the Government's case on direct examination [Rep. Tr. p. 2552] at a stage where an alternative juror could have been substituted [Rep. Tr. p. 2552].

If a juror falls asleep during the trial it is not grounds for a new trial unless it is called to the attention of the court and only then if the court ruled that it was for a length of time to be prejudicial to the defendant.

United States v. Boyden, Fed. Cas. No. 14632 (Cir. Ct., D. Mass.), 24 Fed. Cas. 1213;

Newman v. L. A. Transit Lines, 120 Cal. App. 2d 685, 262 P. 2d 95;

Fleener v. Erickson, 215 P. 2d 885.

VII.

Constitutional Questions (Appellants' Specifications IV and VII).

The test, as to whether a statute is unconstitutional because it is vague and indefinite, "is whether the language conveys sufficiently definite warnings as to the proscribed conduct when measured by common understanding and practices."

Jordan v. De George (1951), 341 U. S. 223.

The act must give the accused sufficient warning so he knows or could know that the act he does is a crime. "But where the punishment imposed is for an act knowingly done with the purpose of doing that which the statute prohibits, the accused cannot be said to suffer from lack of warning or knowledge that the act which he does is a violation of the law."

Screws v. United States (1945), 325 U. S. 91.

If the statute employs words or phrases which are sufficiently certain by reason of their having a technical meaning or a well-settled common-law meaning then it is not void for being vague and indefinite.

Connally v. General Construction Co. (1926), 269 U. S. 385.

Section 1010 prohibits making, passing or uttering any statement knowing it to be false, or forging, altering or counterfeiting any document, or uttering or publishing any such document knowing it to be false, in order to obtain a loan insured by the FHA. The statute requires the act to be knowingly done and all the prohibitions, such as passing or uttering a false statement, or forging a document, have a well-settled meaning and have been construed and defined throughout the development of the Common Law.

VIII.

Two Witness Rule on False Statements (Appellants' Specification VIII).

There has been no case in which it has been held that the two-witness rule in respect to perjury prosecutions applies to Section 1010, Title 18, United States Code. Indeed there have been no cases which have considered the matter.

However, there have been several cases which have considered the matter with respect to Section 1001, Title 18, United States Code. This section says that it is a crime to make false statements about any matter which is within the jurisdiction of any department or agency of the United States. This is much broader than Section 1010 which concerns only fraud or false statements in connection with obtaining FHA insured loans.

There are two cases, both in the Ninth Circuit, which have held that the perjury rule does not apply to false statements proscribed by Section 1001.

Todorow v. United States (9th Cir., 1949), 173 F. 2d 439;

Fisher v. United States (9th Cir., 1956), 231 F. 2d 99.

In *Todorow v. United States* the court said, "there is no sound rule for invoking the perjury rule here . . . It is not a question of an oath against an oath."

The court in *Fisher v. United States,* at 105-106, said that the reasons behind the perjury rule were not applicable in these cases.

One case has held that the perjury rule does apply to Section 1001.

United States v. Levin (Dist. Colo., 1953), 133 F. Supp. 88.

But in that case the court places great stress on its objections to prosecutions for voluntary statements made to investigating agencies. The court made it clear that in the case of a claim against the United States, or some similar dealing where the accused was attempting to get something from the government, that the perjury requirement would not apply.

It said, "There are numerous decisions which have upheld prosecutions under this section. Substantially, all of them have to do with false documents, and generally they are cases involving claims against the United States."

Conclusion.

On the facts in this record and the law applicable thereto, and for the reasons stated herein, the judgments entered are proper and free from prejudicial error and should be affirmed.

Respectfully submitted,

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APPENDIX.

United States District Court for the Southern District of California, Central Division.

September, 1955, Grand Jury.

United States of America, Plaintiff, vs. Max Shayne and Irving Shayne, Defendants. No. 24674 CD.

INDICTMENT.

(U. S. C., Title 18, Secs. 371, 1010, and 2—Conspiracy,, making false statement to lending institution in FHA transaction, aiding.)

The grand jury charges:

Count One.

(U. S. C., Title 18, Sec. 371.)

Beginning on or about the month of June, 1952, and continuing until the month of April, 1953, defendants Max Shayne and Irving Shayne did wilfully and knowingly agree and conspire together and with other persons, whose names are to the grand jury unknown, as follows:

(a) To defraud the United States of America by causing an agency thereof, to wit: the Federal Housing Administration, to insure and guarantee loans for home improvements pursuant to Title I of the National Housing Act, as amended, United States Code, Title 12, Section 1703, by means of false and fraudulent written statements which would be knowingly and wilfully made by the defendants and their co-conspirators, pursuant to said conspiracy, which loans would not conform to said Act and the regulations issued pursuant thereto and which loans would not be entitled to be insured, nor would they

be insured pursuant to said Act, but for said false and fraudulent statements, as said defendants well knew;

(b) To commit certain offenses against the United States of America in violation of United States Code, Title 18, Sections 1010 and 2, by knowingly and unlawfully causing to be passed, uttered, and published certain false statements to lending institutions, for the purpose of obtaining for certain applicants loans and advances of credit from said lending institutions, with the intent that such loans and advances of credit would be offered to, and accepted by, the Federal Housing Administration for insurance;

It was a part of said conspiracy and an object thereof that defendants Max Shayne and Irving Shayne, singly or together, would meet with certain persons who were home owners and who, as the defendants well knew, desired money, which said home owners intended to use for various and sundry purposes not relating to the improvement of their homes; by promising to assist said home owners to secure a loan of money, defendants Max Shayne and Irving Shayne were to induce and persuade said home owners to affix their signatures to contracts whereby said home owners would agree that a construction and improvement company would furnish materials and services to improve their homes; the defendants, in addition, agreed that they would induce and persuade said home owners to sign certain other documents including FHA Title I Credit Applications which, in addition to the contract aforementioned, the defendants thereafter would cause to be passed, uttered, and published to lending institutions for the purpose of obtaining for said home owners loans or advances of credit from said lending institution, which loans or advances of credit, it was intended, would be offered to, and accepted by, the Federal

Housing Administration for insurance; it was known and agreed by the defendants that the documents to be signed by the home owners and to be utilized by said defendants as described hereinbefore would include, among others, FHA Title I Credit Applications which would state that the proceeds of the loans applied for by said home owners (hereinafter referred to as "applicant-borrowers") would be used to improve the property of said applicant-borrowers in a manner and in an amount to be described by said credit applications; these credit applications and the statements contained therein would be false, as said defendants well knew, for, in truth and in fact and to the knowledge of said defendants, the applicant-borrowers would not intend to use, nor would they use, the proceeds of the loans applied for to improve their property in the manner and in the amount as described by said credit applications, but rather said applicant-borrowers, at all times, would intend to use, and would use, the proceeds of the loans for various and sundry purposes not relating to the improvement of their homes and not within the authorized purposes for such insured loans as set forth by the National Housing Act, as amended, and the regulations thereunder;

It was a further part of said conspiracy and an object thereof that said defendants, in their capacity as employees and salesmen for certain home improvement and construction companies, would arrange for such work as was ordered to be done by said applicant-borrowers to be performed by persons herein called "subcontractors"; the defendants would conspire together and agree to submit invoices from said subcontractors to the home improvement and construction companies, for which the defendants acted as employees and salesmen, which in-

voices would purport to show that said subcontractors had completed the work requested of them upon the home of said applicant-borrowers, the defendants agreed that said invoices would be false for, in truth and in fact, the above-mentioned work would not have been performed by said subcontractors; by this device defendants would acquire for their own personal gain the money which was intended for said subcontractors by reason of the invoices submitted by them; and

To effect the objects of said conspiracy the defendants Max Shayne and Irving Shayne committed divers overt acts in the Central Division of the Southern District of California, among which are the following:

(1) On or about June 1, 1952, defendants Max Shayne and Irving Shayne had a conversation with Henry Green and Martha Green at 11722 South Avalon Boulevard, Los Angeles, California;

(2) On or about June 11, 1952, defendant Max Shayne had a conversation with Charles Neiberg at Drexel and Fairfax Avenues, Los Angeles, California, concerning the endorsement of a check drawn by the Commercial Improvement Company in the amount of $900.00 to the order of Smith and Company;

(3) On or about October 15, 1952, defendants Max Shayne and Irving Shayne had a conversation with Mandell Drakes and Moshell Drakes at 620 East 89th Street, Los Angeles, California;

(4) On or about November 10, 1952, defendant Irving Shayne received payment at the Bank of America National Trust and Savings Association, Wilshire and Crescent Heights Branch, Los Angeles, California, upon a check in the amount of $1,030.00 drawn by the Commer-

cial Improvement Company to the order of James J. Marsh;

(5) During the month of April, 1953, defendants Max Shayne and Irving Shayne had a conversation with Mr. and Mrs. Archie L. Thompson at 5126 Towne Avenue, Los Angeles, California;

(6) On or about April 20, 1953, defendants Max Shayne and Irving Shayne submitted to the Citizens National Trust and Savings Bank, Leimert Park Branch, Los Angeles, California, an "estimate" in the amount of $2,395.00 upon the letterhead of Albert Clipper and Sons.

ABSTRACTS OF CREDIT APPLICATIONS.

Title I, FHA.

Exhibit 5-III. Credit application dated June 1, 1952, in the applicant's name of Harry Greene, with home address 11722 South Avalon Boulevard, Los Angeles, California, purportedly signed "Harry Greene Margret Greene" with the further signatures "Shayne-L. Novak, President, Commercial Improvement Company"; which credit application called for work on the above premises, as follows: "Remodel interior, plaster-paint-paper-linoleum" for a cost of $1600;

Exhibit 60-IX. Credit application dated June 16, 1952, in the applicant's name of Earnest C. Johnson, at 10525 South Avalon Boulevard, listing the property to be improved as 1239 East 127th Street and setting forth the improvement to be made as "Interior work" for a cost of $1300, signed on the reverse side as follows: "Earnest C. Johnson, Flordie Mae Johnson, Commercial Improvement Company, L. Novak, President."

Exhibit 48-VII. Credit application date July 12, 1952 in the name of the applicant John W. Olsen, setting forth work to be performed as: "Exterior painting, repair plumbing" for a cost of $1200, signed "John Olsen, Leona Olsen, M. Shayne, H. R. Nathanson, V. President."

Exhibit 31-VI. Credit application dated September 8, 1952 in the name of the applicant David L. Hamilton, at 17440 Tiara, Encino, California, covering work to be performed as follows: "Mastic and linoleum, remodel interior and paint" for a total cost of $1580, $880 for contractor and dealer Sponseller, and $700 customer, signed by David L. Hamilton and Sylvia A. Hamilton.

Exhibit 25-V. Credit application dated October 1, 1952 in the name of applicant Eligh S. Moore, setting forth work to be performed as follows: "Tile kitchen, fix up exterior and paint both houses" for a cost of $500 to Sponseller and $600 to customer.

Exhibit 11-IV. Credit application dated October 15, 1952 in the name of applicant Mandell Drakes at 620 East 89th Street, Los Angeles, California, setting forth work to be performed "Construction—enclose front porch, painting interior of house" for a total cost of $1390, signed by Mandell Drakes, Moshell Drakes, and Commercial Improvement Company, L. Novak, President.

Exhibit 1-II. Credit application dated April 23, 1953 in the name of Archie L. Thompson, 10962 South Avalon, Los Angeles, showing the property to be improved as 5126 Towne Avenue, Los Angeles, setting forth work to be performed as "New roof, new plumbing fixtures, plaster and repair interior, paint entire interior, new tiling and finish garage" for a total cost of $2395, signed by Archie L. Thompson and Viola Thompson, showing a contractor "Mr. Clipper."

Applicable Sections of Title 18, United States Code.

Section 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defarud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

Section 1010. Federal Housing Administration transactions.

Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Federal Housing Administration for insurance, or for the purpose of obtaining any extension or renewal of any loan, the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of such Administration, makes, passes, utters, or publishes any statement, knowing the same to be false, or alters, forges, or counterfeits any instrument, paper, or document, or utters, publishes, or passes as true any instrument, paper, or docu-

ment, knowing it to have been altered, forged, or counterfeited, or wilfully overvalues any security, asset, or income, shall be fined not more than $5,000 or imprisoned not more than two years, or both. June 25, 1948, c. 645, 62 Stat. 751.

Section 2. Principals.

(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such.